

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JD ANDERSON, CORY HARDIN, ERIC LEE, BRETT MESSIEH, DAVID MUHAMMAD, RANJITH THIAGARAJAN, CHASE WILLIAMS, and TOKEN FUND I LLC individually and on behalf of all others similarly situated,

Plaintiffs,

- against -

BINANCE, CHANGPENG ZHAO, YI HE, and ROGER WANG,

Defendants.

Case No. 1:20-cv-02803

**DECLARATION OF JAMES P. ROUHANDEH IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED CLASS ACTION
COMPLAINT AND/OR TO COMPEL ARBITRATION**

James Rouhandeh, pursuant to 28 U.S.C. § 1746, hereby declares:

1. I am an attorney admitted to practice before this Court, and I am a partner in the law firm of Davis Polk & Wardwell LLP, counsel in the above-captioned matter for defendants Binance, Changpeng Zhao, Yi He, and Roger Wang (collectively, "defendants"). I submit this declaration in support of defendants' motion to dismiss the Second Amended Class Action Complaint (the "SACAC") (Dkt. No. 55) pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(6), and the doctrine of *forum non conveniens*, and/or to compel arbitration.

2. Attached as Exhibit 1 is a true and correct copy of the Binance Terms of Use, last revised February 20, 2019, which were retrieved on February 16, 2021 through the Internet Archive's "Wayback Machine," available at <https://web.archive.org/web/20190225045123/https://www.binance.com/agreement.html>, from a snapshot dated February 25, 2019.

3. Attached as Exhibit 2 is a true and correct copy of a webpage entitled “FAQ,” available on Binance’s website at <https://www.binance.com/en/support>, which was retrieved on February 11, 2021.

4. Attached as Exhibit 3 is a table reflecting the earliest and latest alleged purchases of each Token (as defined in defendants’ accompanying memorandum of law) by each named plaintiff, as reflected in Exhibits A–H to plaintiffs’ Amended Class Action Complaint (Dkt. No. 43), which are incorporated by reference in plaintiffs’ SACAC through paragraphs 15 to 22 thereof.

5. Attached as Exhibit 4 is a true and correct copy of a webpage entitled “National Securities Exchanges,” available on the website of the U.S. Securities and Exchange Commission (“SEC”) at <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangess.html.html>, which was retrieved on February 13, 2021.

6. Attached as Exhibit 5 is a true and correct copy of a webpage entitled “Company Information About Active Broker-Dealers,” available on the SEC’s website at <https://www.sec.gov/help/foiadocsbdfoiahtm.html>, which was retrieved on February 13, 2021.

7. Attached as Exhibit 6 is a true and correct copy of the “Framework for ‘Investment Contract’ Analysis of Digital Assets Guidance,” dated April 3, 2019, issued by the SEC’s Strategic Hub for Innovation and Financial Technology, available on the SEC’s website at <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>, which was retrieved on February 11, 2021.

8. Attached as Exhibit 7 is a true and correct copy of the SEC’s Exchange Act Release No. 81207, the Report of Investigation Pursuant to Section 21(a) of the Securities

Exchange Act of 1934: The DAO, dated July 25, 2017, available on the SEC's website at <https://www.sec.gov/litigation/investreport/34-81207.pdf>.

9. Attached as Exhibit 8 is a true and correct copy of the "Statement on Potentially Unlawful Online Platforms for Trading Digital Assets" by the SEC's Divisions of Enforcement and Trading Markets, dated March 7, 2018, available on the SEC's website at <https://www.sec.gov/news/public-statement/enforcement-tm-statement-potentially-unlawful-online-platforms-trading>, which was retrieved on February 11, 2021.

10. Attached as Exhibit 9 is a true and correct copy of an article by Kate Rooney entitled "SEC chief says agency won't change securities laws to cater to cryptocurrencies," published by CNBC on June 6, 2018, and available at <https://www.cnbc.com/2018/06/06/sec-chairman-clayton-says-agency-wont-change-definition-of-a-security.html>, which was retrieved on February 13, 2021.

11. Attached as Exhibit 10 is a true and correct copy of remarks made by William Hinman, Director of the SEC's Division of Corporation Finance, at the Yahoo Finance All Markets Summit on June 14, 2018, available on the SEC's website at <https://www.sec.gov/news/speech/speech-hinman-061418>, which was retrieved on February 11, 2021.

12. Attached as Exhibit 11 is a true and correct copy of the Binance Terms of Use, last revised July 6, 2017, which were retrieved on February 12, 2021 through the Internet Archive's "Wayback Machine," available at <https://web.archive.org/web/20170910002559/https://www.binance.com/agreement.html>, from a snapshot dated September 10, 2017.

13. Attached as Exhibit 12 is a true and correct copy of the Binance Terms of Use, last revised on January 13, 2021, available on Binance's website at <https://www.binance.com/en/terms>, which were retrieved on February 12, 2021.

14. Attached as Exhibit 13 is a table setting forth the statutory nexus requirement in the Blue Sky law for each jurisdiction pursuant to which the SACAC asserts a claim but in which none of the named plaintiffs allege they reside or transacted.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 16, 2021
New York, New York

/s/ James P. Rouhandeh
JAMES P. ROUHANDEH